

ORDINANCE NO.

AN ORDINANCE AMENDING CITY CODE CHAPTER 25-2 REGARDING DENSITY BONUS REGULATIONS IN THE DOWNTOWN DENSITY BONUS PROGRAM AND THE RAINEY STREET SUBDISTRICT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Section 25-2-586 (*Downtown Density Bonus Program*) of the City Code is amended to read as follows:

§ 25-2-586 DOWNTOWN DENSITY BONUS PROGRAM.

(A) **Definitions.** In this section:

(1) BONUS AREA means the greater of:

- (a) The gross floor area that exceeds the maximum allowable floor-to-area ratio allowed with the site's primary entitlements; or
- (b) The gross floor area contained within the portion of a structure that exceeds the maximum height allowed under the site's primary entitlements.

(2) COMMUNITY BENEFIT is a public amenity that exceeds the gatekeeper requirements of the Downtown Density Bonus Program and that is provided by an applicant in order to obtain bonus area.

(3) CULTURAL USES are uses that are eligible to participate in the City of Austin Core Cultural Funding Program.

(4) DAY CARE SERVICES is the provision of one or more of the three day care services defined in Section 25-2-6 (*Civic Uses Described*) of the City Code.

(5) [(2)] DEVELOPMENT BONUS FEE means the dollar amount an applicant pays to the City per square foot of bonus area.

(6) [(3)] DIRECTOR means director of the Planning and Development Review Department.

(7) [(4)] DWELLING UNIT means a single unit providing complete, independent living facilities for one or more persons, including

1 permanent provisions for living, sleeping, eating, cooking and
2 sanitation.

3
4 (8) FAMILY-FRIENDLY ELIGIBLE BEDROOM is any bedroom over
5 one bedroom within a dwelling unit that provides on-site affordable
6 housing that complies with all of the affordability requirements of
7 Subsection (G) of this section.

8
9 (9) [~~5~~] GREAT STREETS STREETSCAPE STANDARDS means design
10 standards for streets within the boundaries of the Great Streets Master
11 Plan.

12
13 (10) LIVE MUSIC USE is the performance of live music at least four days
14 a week in an indoor public or private facility of at least 2,500 square
15 feet that is open to the general public and readily equipped with
16 sound, staging, lighting and safety accoutrements to accommodate
17 professional and semi-professional live music needs on a daily basis.

18 (11) [~~6~~] MIXED-USE PROJECT means a project that has 25 percent or more
19 of its floor area in a use different from a predominant use.

20
21 (12) [~~7~~] NON-RESIDENTIAL PROJECT means a project for which the
22 predominant use is not listed in Section 25-2-3 (*Residential Uses*
23 *Described*), and which has less than 25 percent of its floor area
24 devoted to uses described in Section 25-2-3 (*Residential Uses*
25 *Described*).

26
27 (13) [~~8~~] PRIMARY ENTITLEMENT means the height and floor-to-area ratio
28 entitlement that a site derives from its current zoning. That
29 entitlement may be derived from the base zoning or from a previous
30 modification to the base zoning.

31
32 (14) PUBLICLY ACCESSIBLE ON-SITE PLAZA is a publicly-accessible
33 area provided by an applicant as a community benefit that complies
34 with the Downtown Public Plaza Standards adopted by administrative
35 rule.

36
37 (15) [~~9~~] RESIDENTIAL PROJECT means a project for which the
38 predominant use is within one or more of the classifications described
39 in Section 25-2-3 (*Residential Uses Described*).

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1 (16) [(10)] URBAN DESIGN GUIDELINES means guidelines for public
2 streetscapes, plazas, open space and buildings in a dense area, adopted
3 by City Council.
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5 **(B) Downtown Density Bonus Maps and Table.**

- 6 (1) The downtown district boundaries are shown on the Downtown
7 Districts Map (Figure 1). Properties in the downtown district that are
8 eligible for density bonuses under this section are shown on the
9 Eligibility, Floor-to-Area Ratio and Height Maps (Figure 2).
- 10 (2) The amount of floor-to-area ratio or height that may be achieved by a
11 downtown density bonus for a site is limited by the maximum height
12 or Floor-to-Area Ratio identified on Figure 2.
- 13 (3) The maximum heights and maximum floor-to-area ratios on Figure 2
14 do not modify a site's primary entitlement. If the maximum height or
15 maximum floor-to-area ratio allowed under a primary entitlement
16 exceeds the height or floor-to-area ratio on Figure 2, the bonus area is
17 calculated by using the site's primary entitlement that does not exceed
18 the maximums shown on Figure 2.
- 19 (4)[3] The development bonus fee may vary by use and downtown district.
20 The applicable development bonus fee within each of the nine districts
21 is established by ordinance.

22 **(C) Program Requirements.**

- 23
- 24 (1) Gatekeeper Requirements.
- 25 (a) To receive bonus area, the director must determine that the
26 project substantially complies with the Urban Design
27 Guidelines.
- 28 (i) The applicant must submit to the director a schematic
29 level site plan, building elevations, and other drawings,
30 simulations or other documents necessary to fully
31 describe the urban design character of the project and
32 relationship of the project to its surroundings.
- 33
- 34 (ii) The Design Commission shall evaluate and make
35 recommendations regarding whether the project complies
36 with the Urban Design Guidelines and the director shall

1 consider comments and recommendations of the Design
2 Commission.

3
4 (b) The applicant shall execute a restrictive covenant committing to
5 provide streetscape improvements along all public street
6 frontages, consistent with the Great Streets Standards.

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8 (c) The applicant shall execute a restrictive covenant committing to
9 achieve a minimum two star rating under the Austin Energy
10 Green Building program using the ratings in effect at the time
11 the project is registered with the Austin Energy Green Building
12 program [~~ratings application is submitted for the project~~]. The
13 applicant shall also provide the director with a copy of the
14 project's signed Austin Energy Green Building Letter of Intent
15 before the director may approve bonus area for a site.

16
17 (2) After the director determines the applicant meets the gatekeeper
18 requirements, the applicant shall provide sufficient written
19 information so that the director can determine:

20
21 (a) the site's primary entitlement;

22
23 (b) the amount of bonus area that the applicant is requesting; [~~and,~~]

24
25 (c) the total dollar amount the applicant will pay if the applicant
26 chooses to obtain the entire bonus area exclusively by paying a
27 development bonus fee[-], and the amount of the fee to be
28 dedicated to each community benefit; and,

29
30 (d) the community benefits the applicant proposes to provide to
31 obtain bonus area if the bonus area will not be obtained
32 exclusively by paying a development bonus fee.

33
34 (D) **Changes in Design of Proposed Building.** If the design of a building
35 changes after a bonus is granted under this section, the director shall review
36 the new design for substantial compliance with the Urban Design Guidelines
37 prior to building permit approval. A building permit for a final design will
38 not be approved until the design substantially complies [~~compliance~~] with
39 the gatekeeper requirements and the restrictive covenants are amended to
40 reflect new or revised community benefits.

1 (E) **Community Benefits.** A person may achieve [~~density bonuses~~] bonus area
2 by providing community benefits outlined in this subsection [~~section~~]. If the
3 applicant chooses to achieve 100 percent of the desired bonus area by
4 providing community benefits described in (E)(1) – (12), the director may
5 approve the bonus area administratively.
6

7 (1) Affordable Housing Community Benefits.
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9 (a) Affordable Housing Community Benefit. An applicant may use
10 one or more of the following.
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12 (i) On-site affordable housing. A project may achieve bonus
13 area by providing on-site affordable housing within the
14 project. The amount of bonus area that may be achieved
15 for each one square foot of dwelling unit space that is
16 devoted to on-site affordable housing is established by
17 ordinance.
18

19 (ii) Family-friendly housing. A project providing on-site
20 affordable housing may achieve additional bonus area by
21 providing one or more family-friendly eligible bedrooms.
22 The amount of bonus area that may be achieved for each
23 family-friendly eligible bedroom is established by
24 ordinance.
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26 (iii)[(ii)] Development bonus fee for affordable housing. The
27 project may achieve bonus area by paying a development
28 bonus fee at the dollar per square foot amount set by
29 ordinance. The fee will be paid into the Affordable
30 Housing Trust Fund.
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32 (b) Affordable housing community benefit percentages.
33

34 (i) A project must achieve at least 50 percent of the desired
35 bonus area by providing affordable housing community
36 benefits [~~on-site affordable housing, paying a~~
37 ~~development bonus fee, or a combination of the two~~].
38

39 [(ii)] [~~If an applicant chooses to achieve 100 percent of the~~
40 ~~desired bonus area exclusively by providing affordable~~
41 ~~housing community benefits, the approval for the bonus~~
~~area can be granted administratively by the director.~~]
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2 (ii)~~(iii)~~ For any portion of the desired bonus area not achieved
3 by providing affordable housing benefits, the applicant
4 shall achieve bonus area by providing one or more of the
5 ~~[other]~~ community benefits described in (E)(2) – (13)
6 below.
7

8 (2) Rainey Street Subdistrict Historic Preservation Community Benefit.

9 (a) A project may achieve bonus area for each historically
10 significant building that is:

11 (i) rehabilitated; and

12 (ii) preserved on site, relocated to a site within the Rainey
13 Street Subdistrict, or relocated to a location within the
14 city limits as determined appropriate by the Historic
15 Landmark Commission.

16 (b) The amount of bonus area that may be achieved for on-site
17 improvements for Rainey Street Subdistrict historic
18 preservation is established by ordinance.

19 (c) Buildings eligible for this community benefit include those
20 buildings within the Rainey Street National Historic Register
21 District that the City’s historic preservation officer has
22 determined contribute to the historic character of the Rainey
23 Street National Historic Register District.

24 (d) Requirements:

25 (i) Development using this community benefit option shall
26 maintain the architectural integrity of the building as
27 determined by the Historic Landmark Commission
28 (HLC) whether or not the building is zoned H-Historic or
29 HD-Local Historic District.

30 (ii) The HLC must review and approve modifications to a
31 building before the City may grant a density bonus.

32 (iii) Development may use this option only in cases where a
33 substantial percentage of the external walls and internal
34 structure remain intact at project completion.
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1 (iv) An applicant must provide a description of the
2 rehabilitation that describes the existing conditions of the
3 building and the proposed work. The applicant must
4 submit photographs showing the major character-
5 defining features of the building prior to the start of
6 work.

7 (v) Before the director may issue any type of certificate of
8 occupancy, an applicant must submit documentation
9 verifying that the work has been completed as proposed.
10 The documentation must be submitted in a format similar
11 to the Description of Rehabilitation portion of the United
12 States Department of the Interior National Park Service
13 Historic Preservation Certification Application.

14 (vi) An applicant who cannot complete restoration as
15 proposed must pay into the Historic Preservation Fund
16 the applicable development bonus fee for the bonus area
17 initially granted for this community benefit. The
18 applicant's payment will be based on the development
19 bonus fee in effect at the time the applicant pays the fee.

20 (3) Day Care Services Community Benefit.

21 (a) A project may achieve bonus area by providing day care
22 services within the project. The amount of bonus area that may
23 be achieved for each square foot of day care services that are
24 provided is established by ordinance.

25 (b) Requirements:

26 (i) The applicant must execute a restrictive covenant that
27 requires compliance with all relevant requirements of this
28 section and that ensures continuation of operations and
29 maintenance of the facility with the specified community
30 benefit use for a period of at least 10 years, which is the
31 life of the agreement.

32 (ii) City of Austin must approve of the operator and the lease
33 terms, which shall be for no less than ten years.

34 (iii) The facility must comply with applicable state and local
35 codes.
36

- 1 (iv) The facility must be open during normal business hours
2 at least five days each week and fifty weeks each
3 calendar year.
- 4 (v) The facility must be maintained and kept in a good state
5 of repair throughout the life of the agreement.
- 6 (vi) If the day care services use is non-operational for more
7 than 180 consecutive days, the owner must pay into the
8 Affordable Housing Trust Fund the applicable
9 development bonus fee for the bonus area initially
10 granted for this community benefit. The payment will be
11 a pro-rated amount based on the time left in the term of
12 the agreement and based on the development bonus fee in
13 effect when the owner pays.

14 (4) Cultural Uses Community Benefit.

15 (a) A project may achieve bonus area by providing on-site cultural
16 uses within the project. The amount of bonus area that may be
17 achieved for each square foot of cultural uses provided is
18 established by ordinance.

19 (b) Requirements:

- 20 (i) The applicant must execute a restrictive covenant that
21 requires compliance with all requirements of this section
22 and that ensures continuation of operations and
23 maintenance of the facility with the specified community
24 benefit use for a period of at least 10 years, which is the
25 life of the agreement.
- 26 (ii) City of Austin must approve of the operator and the lease
27 terms, which shall be for no less than ten years.
- 28 (iii) Use must meet the definition of cultural uses and the
29 space must be leased to a 501(c) organization.
- 30 (iv) If the required use is non-operational for more than 180
31 consecutive days, the owner must pay into the Affordable
32 Housing Trust Fund the applicable development bonus
33 fee for the bonus area initially granted for this
34 community benefit. The payment will be a pro-rated
35 amount based on the time left in the term of the
36 agreement.

1 agreement and based on the development bonus fee in
2 effect when the owner pays.

3 (5) Live Music Community Benefit.

4 (a) A project may achieve bonus area by providing an on-site live
5 music use. The amount of bonus area that may be achieved for
6 each square foot of live music use is established by ordinance.

7 (b) Requirements:

8 (i) The applicant must ensure continuation of operations and
9 maintenance of the facility with the specified community
10 benefit use for a period of at least 10 years, which is the
11 life of the agreement.

12 (ii) City of Austin must approve of the operator and the lease
13 terms, which shall be for no less than ten years.

14 (iii) The operator of the facility must maintain proper
15 permitting and documentation to play amplified music in
16 said space.

17 (iv) The space must meet the City of Austin's sound-proofing
18 specifications.

19 (v) If the required use is non-operational for more than 180
20 consecutive days, the owner must pay into the Affordable
21 Housing Trust Fund the applicable development bonus
22 fee for the bonus area initially granted for this
23 community benefit. The payment will be a pro-rated
24 amount based on the time left in the term of the
25 agreement and based on the development bonus fee in
26 effect when the owner pays.

27 (6) On-Site Improvements for Historic Preservation Community Benefit.

28 (a) A project may achieve bonus area by providing on-site
29 improvements for historic preservation. The amount of bonus
30 area that may be achieved for on-site improvements for historic
31 preservation is established by ordinance.

32 (b) Buildings Eligible for On-Site Improvements for Historic
33 Preservation Community Benefit include:

- 1 (i) Buildings designated as City landmarks, Recorded Texas
2 Historic Landmarks, State Antiquities Landmarks, or
3 listed on the National Register of Historic Places;
4 (ii) Contributing properties within National Register or Local
5 Historic Districts;
6 (iii) Buildings determined by the City's Historic Preservation
7 Officer to be historically significant; or
8 (iv) Buildings determined eligible for listing on the National
9 Register of Historic Places by the State Historic
10 Preservation Officer.

11 (c) Requirements:

- 12 (i) Development using this community benefit option for on-
13 site improvements shall maintain the architectural
14 integrity of the building, as determined by the Historic
15 Landmark Commission (HLC) whether or not the
16 building is zoned H-Historic or HD-Local Historic
17 District.
18 (ii) The HLC must review and approve modifications to a
19 building before the City may grant a density bonus.
20 (iii) A project may be granted bonus area for on-site
21 improvements for historic preservation only in cases
22 where a substantial percentage of the external walls and
23 internal structure remain intact at project completion.
24 (iv) Applicant must provide a description of rehabilitation
25 that describes the existing condition of the building and
26 the proposed work. The applicant must submit
27 photographs showing the major character-defining
28 features of the building prior to the start of work.
29 (v) Before the director may issue any type of Certificate of
30 Occupancy, an applicant must submit documents
31 verifying that the work has been completed as proposed.
32 The documents must be submitted in a format similar to
33 the Description of Rehabilitation portion of the United
34 States Department of the Interior National Park Service
35 Historic Preservation Certification Application.

1 (vi) If restoration cannot be completed as proposed, the
2 owner must pay into the Historic Preservation Fund the
3 applicable development bonus fee for the bonus area
4 initially granted for this community benefit. The owner's
5 payment will be based on the development bonus fee in
6 effect at the time the owner pays the fee.

7 (7) Development Bonus Fee for Off-Site Historic Preservation
8 Community Benefit.

9 (a) The project may achieve bonus area by paying a development
10 bonus fee at the dollar per square foot amount set by ordinance
11 based on the district in which the proposed development is
12 located. The fee will be paid into the Historic Preservation
13 Fund.

14 (b) Requirements:

15 (i) The City of Austin will administer the Historic
16 Preservation Fund.

17 (ii) This option cannot be used if developer is proposing to
18 demolish all or a substantial percentage of a building the
19 Historic Preservation Officer deems historically
20 significant.

21 (8) Green Building Community Benefit.

22 (a) An applicant may achieve bonus area by constructing a project
23 to green building standards that exceed the Gatekeeper
24 requirements. The amount of bonus area that may be achieved
25 for constructing a project to green building standards is
26 established by ordinance.

27 (b) Requirements:

28 (i) The applicant shall execute a restrictive covenant
29 committing to achieve a specified rating under the Austin
30 Energy Green Building (AEGB) program using the
31 ratings in effect at the time the ratings application is
32 submitted for the project or Leadership in Energy &
33 Environmental Design (LEED) program using the most
34 recently launched version of the LEED for New
35 Construction rating at the time of the project's
36 registration.

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- (ii) The applicant shall also provide the director with a copy of the project's signed Austin Energy Green Building Letter of Intent for projects seeking AEGB rating or a copy of the completed LEED registration for projects seeking LEED rating before the director may approve bonus area for a site.
 - (iii) An applicant must submit an AEGB or LEED checklist indicating the measures the project intends to complete to meet the applicable green building requirement before the director may approve bonus area for a site.
 - (iv) A project seeking an AEGB rating will be subject to at least one inspection during construction and an inspection at substantial completion. A project seeking LEED certification must submit the LEED design review results and an updated LEED checklist or scorecard indicating the project will be able to obtain LEED certification by substantial completion.
 - (v) If the specified AEGB rating or LEED certification is not achieved within nine months from time of occupancy, an owner must pay into the Affordable Housing Trust Fund the applicable development bonus fee for the bonus area initially granted for this community benefit. The owner's payment will be based on the development bonus fee in effect when the owner pays.

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(9) Publicly Accessible On-Site Plaza Community Benefit.

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- (a) A project may achieve bonus area by providing a publicly accessible on-site plaza. The amount of bonus area that may be achieved by providing a publicly accessible on-site plaza is established by ordinance.
 - (b) Requirements:
 - (i) Eligible plazas must conform to the Downtown Public Plaza Standards adopted by administrative rule.
 - (ii) If the required plaza is non-operational for more than 180 consecutive days, the owner must pay into the Downtown

1 Open Space Fund the applicable development bonus fee
2 for the bonus area initially granted for this community
3 benefit. The payment will be based on the development
4 bonus fee in effect when the owner pays.

5 (10) Off-Site Open Space Development Bonus Fee Community Benefit.

6 (a) The project may achieve bonus area by paying a development
7 bonus fee for off-site open space at the dollar per square foot
8 amount set by ordinance based on the district in which the
9 proposed development is located. The fee will be paid into the
10 Downtown Open Space Fund.

11 (b) Requirements:

12 (i) City will administer the Downtown Open Space Fund.

13 (ii) The development bonus fee option is only available for
14 open space beyond what is already required by City
15 Code.

16 (iii) The applicant must deposit a nonrefundable cash
17 payment with the City.

18 (11) Green Roof Community Benefit.

19 (a) A project may achieve bonus area by providing green roofs.
20 The amount of bonus area that may be achieved for the
21 construction of green roofs is established by ordinance.

22 (b) Requirements:

23 (i) Green Roofs must be built to the Vegetated (“Green”)
24 Roof Performance Standards in Appendix W of the
25 Environmental Criteria Manual. The percent of
26 vegetated roof cover is calculated as a portion of total
27 roof area excluding mechanical equipment, photovoltaic
28 panels, swimming pools, and skylights.

29 (ii) If the green roof fails to meet the Vegetated (“Green”)
30 Roof Performance Standards for more than 180
31 consecutive days, the owner must pay into the Downtown
32 Open Space Fund the applicable development bonus fee
33 for the bonus area initially granted for this community
34

1 benefit. The payment will be based on the development
2 bonus fee in effect when the owner pays.

3 (iii) Green roof areas used to achieve bonus area through the
4 Green Roof Community Benefit may not be used to
5 achieve bonus area through the Publicly Accessible On-
6 Site Plaza Community Benefit.

7 (12) On-site Children Play Area Community Benefit.

8 (a) A project may achieve one square foot of bonus area for each
9 one square foot of area provided by an applicant for children's
10 play areas, common open space for children, and similar space.

11 (b) Requirements:

12 (i) The requirements that an applicant must meet in order to
13 achieve bonus area for this community benefit are
14 adopted by administrative rule.

15 (13) [(2)] [~~Other Community Benefits.~~] Other Community Benefits.

16
17 (a) An applicant may offer to provide other community benefits not
18 described in (E)(1) – (12). The applicant must provide
19 sufficient information about the other community benefits for
20 the director to determine whether the other community benefits
21 serve a public and municipal purpose considering the criteria
22 listed below.

23
24 (b) The director will consider the following to make a
25 determination:

26
27 (i) if members of the general public will be able to enjoy the
28 proposed other community benefit without paying for its
29 access, use or enjoyment;

30 (ii) if the proposed other community benefit will connect to
31 and be accessible from public right-of-way or other
32 publicly-accessible space;

33 (iii) if the proposed other community benefit will provide a
34 public amenity that is particularly lacking in the proposed
35 location;

- 1 (iv) if the proposed other community benefit will impose a
2 significant burden on public resources for maintenance,
3 management, policing, or other reasons; and,
4 (v) any other information provided by the applicant that
5 shows the other community benefit serves a public and
6 municipal purpose and furthers the City's comprehensive
7 planning goals.

8 (c) If a proposed other community benefit provides a partial benefit
9 to a project, it will not be disqualified; the director will allocate
10 only the cost of the public portion of the benefit to the other
11 community benefits.

12 (d) [(3)] If the director determines that the proposed benefit qualifies as
13 a community benefit, the director shall:

14 (i) [(a)] quantify the monetary cost for the proposed other
15 community benefit by using standard industry sources as
16 well as locally based data on development costs to
17 quantify the monetary cost, without mark-up, for the
18 proposed other community benefit; and,

19 (ii) [(b)] determine the cost to be applied towards achieving the
20 desired bonus area.

21 (e) [(4)] The amount determined by the director may be applied to
22 achieve bonus area on the same basis as the development bonus
23 fee applicable to the type and location of the project.

24 (f) [(5)] The director's recommendation concerning the proposed other
25 community benefit and the monetary value that is applied to
26 achieve the bonus area shall be presented to the planning
27 commission for recommendation and the city council for
28 approval.

29 (g) [(6)] If the applicant proposes to achieve bonus area by providing
30 other community benefits, the value of the [~~affordable housing~~
31 ~~benefits plus the value of the~~] public portion of the proposed
32 other community benefits must be equal to or greater than the
33 total dollar amount the applicant would pay if the payment were
34 based on the applicable development bonus fee required to earn
35 that requested bonus area [~~dollar amount that the director~~
36 ~~calculates in Section 25-2-586(C)(2)(e)~~].
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2 (F) **Community Benefit Calculations** [~~Development Bonus Fee~~] for Mixed-
3 Use Projects. Mixed-use projects shall provide community benefits [~~pay~~
4 ~~development bonus fees~~] in proportion to the amount of floor area in the
5 project that is devoted to different use categories.
6

7 (G) **Affordability Requirements.** For purposes of this section, a unit is
8 affordable for purchase or rental if, in addition to the other requirements of
9 this section, the household is required to spend no more than 30 percent of
10 its gross monthly income on mortgage or rental payments for the unit.

11 (1) Affordability requirements for owner-occupied units.

12 (a) On-site for sale affordable housing units shall be reserved, sold
13 and transferred to an income eligible buyer subject to a resale
14 restricted, shared equity agreement [~~as affordable through a~~
15 ~~City approved affordable housing land trust or other shared~~
16 ~~equity model~~] approved by the director of Neighborhood
17 Housing and Community Development, for not less than 99
18 years from the date a certificate of occupancy is issued.

19 (b) The units shall be made available for ownership and occupancy
20 by households earning no more than 120 percent of the Annual
21 Median Family Income for the City of Austin Metropolitan
22 Statistical Area as determined by the director of Neighborhood
23 Housing and Community Development.

24 (2) Affordability requirements for rental units.

25 (a) On-site rental affordability housing units shall be reserved as
26 affordable for a minimum of 40 years following the issuance of
27 the certificate of occupancy.

28 (b) The units shall be made available for rental by households
29 earning no more than 80 percent of the annual median family
30 income for the City of Austin metropolitan statistical area as
31 determined by the director of Neighborhood Housing and
32 Community Development.

33 (c) An applicant may not deny a prospective tenant affordable
34 rental housing based solely on the prospective tenant's
35 participation in the Housing Choice Voucher Program or in any
36 other housing voucher program that provides rental assistance.

1 (3) Rules. The Neighborhood Housing and Community Development
2 Office shall conduct compliance and monitoring of the affordability
3 requirements of this ordinance. The director of Neighborhood
4 Housing and Community Development shall establish compliance and
5 monitoring rules and criteria for implementing the affordability
6 requirements of this ordinance.

7 (H) **Applicant's obligation.** Before the director may issue any type of
8 Certificate of Occupancy, an applicant must fulfill all obligations including
9 but not limited to the payment of all fees and execution of restrictive
10 covenants in order to ensure that the applicant provides all required
11 community benefits. All approvals must be obtained and evidence of the
12 approvals must be provided to the director prior to site plan submittal.

13
14 (I) **Director's approval.** Once an applicant meets the requirements of the
15 downtown density bonus program, the director will issue a written notice of
16 approval that indicates the project's allowable floor-to- area ratio and
17 height.

18 (J) **Appeal.**

- 19 (1) An applicant may appeal to the city council the director's
20 determination that the gatekeeper requirements have not been met.
- 21 (2) An applicant must appeal the determination within 30 days from the
22 date of the director's denial.
- 23 (3) An appeal is subject to the procedures set forth in Section 25-2-282
24 (*Land Use Commission Public Hearing and Recommendation*) and
25 Section 25-2-283 (*City Council Zoning Hearing and Action*) of the
26 City Code.

27 **PART 2.** Subsection (C) of Section 25-2-739 (*Rainey Street Subdistrict Regulations*) of
28 the City Code is repealed and replaced with a new Subsection (C) to read as follows:

- 29 (C) This subsection applies to property in the Rainey Street Subdistrict zoned
30 central business district (CBD) after April 17, 2005.
- 31 (1) For a building located on Red River Street from Cesar Chavez Street
32 to Driskill Street or River Street from I-35 to River Street's western
33 terminus, the development must have sidewalks not less than ten feet
34 wide along the street frontage.
- 35 (2) A use with a drive-in service is prohibited.

- 1 (3) Except as provided in Subsection (C)(4) below, for a residential or
2 mixed-use building the maximum building height is forty (40) feet.
- 3 (4) An applicant may exceed the forty foot height limit and achieve a
4 floor-to-area ratio of 8:1 if at least five percent of the square footage
5 of dwelling units developed within that floor-to-area ratio of 8:1 is
6 available to house persons whose household income is eighty percent
7 or below the median family income in the Austin statistical
8 metropolitan area, as determined by the director of the Neighborhood
9 Housing and Community Development Office.
- 10 (a) In meeting the five percent requirement, mixed-use projects
11 shall provide on-site affordable housing in proportion to the
12 amount of floor area in the project that is devoted to residential
13 uses.
- 14 (b) The affordability period for housing units shall be forty years
15 for rental housing and ninety-nine years for on-site for sale
16 housing. The affordability period begins on the date a
17 certificate of occupancy is issued.
- 18 (c) On-site affordable housing units offered for sale shall be
19 reserved, sold, and transferred to an income eligible buyer
20 subject to a resale restricted, shared equity agreement approved
21 by the director of Neighborhood Housing and Community
22 Development.
- 23 (d) An applicant may not deny a prospective tenant affordable
24 rental housing based solely on the prospective tenant's
25 participation in the Housing Choice Voucher Program or in any
26 other housing voucher program that provides rental assistance.
- 27 (e) The bedroom count mix for the affordable units must be
28 proportional to the overall bedroom count mix within an
29 overall development.
- 30 (5) Development in the Rainey Street Subdistrict may participate in the
31 Downtown Density Bonus Program as provided below.
- 32 (a) In order to achieve bonus area exceeding the floor-to-area ratio
33 of 8:1 in the Rainey Street Subdistrict, development must
34 comply with the requirements of Section 25-2-586 (*Downtown
35 Density Bonus Program*) of the City Code. The requirements
36 of the Downtown Density Bonus Program apply only to that
37 portion of development that exceeds a floor-to-area ratio of 8:1.

1 (b) The maximum height and maximum floor-to-area ratio that
2 development in the Rainey Street Subdistrict may achieve by
3 participating in the Downtown Density Bonus Program are
4 shown on Figure 2 of Section 25-2-586 (*Downtown Density*
5 *Bonus Program*) of the City Code.

6 (c) The Neighborhood Housing and Community Development
7 Office will conduct compliance and monitoring of the
8 affordability requirements of this ordinance. The director of
9 Neighborhood Housing and Community Development shall
10 establish compliance and monitoring rules and criteria for
11 implementing the affordability requirements of this ordinance.

12 **PART 3.** Existing Figure 2 of Section 25-2-586 (*Downtown Density Bonus Program*)
13 of the City Code is repealed in its entirety and replaced with the new Figure 2 attached to
14 this ordinance.

15 **PART 4.** One hundred fifty square feet of bonus area shall be granted for each family
16 friendly eligible bedroom provided within a unit as described in 25-2-586(E)(1).

17 **PART 5.** 25,000 square feet of bonus area shall be granted for each historically
18 significant building restored and preserved through the Rainey Street Subdistrict Historic
19 Preservation community benefit described in 25-2-586(E)(2).

20 **PART 6.** Two square feet of bonus area shall be granted for each one square foot of
21 space for day care services provided as described in 25-2-586(E)(3).

22 **PART 7.** Two square feet of bonus area shall be granted for each one square foot of
23 space for cultural uses or live music uses provided as described in 25-2-586(E)(4) and 25-
24 2-586(E)(5), respectively.

25 **PART 8.** Five square feet of bonus area shall be granted for each one square foot of an
26 historic building preserved according to the on-site historic preservation requirements
27 defined in 25-2-586(E)(6).

28 **PART 9.** One square foot of bonus area shall be granted for each district-specific
29 development bonus fee for off-site historic preservation as described in 25-2-586(E)(7).

30 **PART 10.** Bonus area equal to 20% of the site's primary entitlement shall be granted
31 for 3-star Austin Energy Green Building (AEGB) rating or LEED for New Construction
32 Gold rating as defined in 25-2-586(E)(8).

33 **PART 11.** Five square feet of bonus area shall be granted for each one square foot of
34 eligible plaza space as defined in 25-2-586(E)(9).

1 **PART 12.** One square foot of bonus area shall be granted for each district-specific
2 development bonus fee for off-site open space as defined in 25-2-586(E)(10).

3 **PART 13.** The Downtown Open Space Fund is established and is available only for
4 capital improvements, operations and maintenance purposes of publicly-owned open
5 space such as parks, parklets, and alleys in the Downtown Area. The fund supplements
6 but does not supplant the Parks and Recreation Department budget. The fund is overseen
7 by the Parks Department and disbursements may be made after the Parks Departments
8 considers input from the Parks and Recreation Board and from an applicant who pays
9 into the fund to achieve bonus area.

10 **PART 14.** Bonus area shown in the chart below shall be granted for each one square
11 foot of green roof provided as defined in 25-2-586(E)(11).
12

| Percent Vegetated Roof Cover | Bonus Area Granted | Bonus Area Granted for Publicly Accessible Green Roofs | Bonus Area Granted for Green Roofs meeting the Downtown Public Plaza Standards |
|------------------------------|---------------------|--|--|
| 30-49% | 2 bonus square feet | 2 additional bonus square feet | 2 additional bonus square feet |
| 50% or greater | 3 bonus square feet | | |

13
14 **PART 15.** The city manager shall evaluate and, if necessary, recommend adjusting the
15 development bonus fee, the menu of community benefits, the on-site affordable housing
16 bonus area and the allocation of money generated by the fee at least every three years.
17 The city manager shall determine the new fees, the menu of community benefits, the
18 bonus area, and the allocation of monies and submit those changes to the city council for
19 approval.

20 **PART 16.** The city manager shall consider rules that address the Planning
21 Commission's recommendations related to the marketing of affordable housing units, the
22 eligibility of full-time students to access affordable housing, ensuring that affordable
23 housing units with family-friendly bedrooms are available to households with children,
24 and serving the needs of Austin's downtown workers.

